

MEMORANDUM

Agenda Item No. 14(A)(25)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: July 20, 2021

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution approving third amendment to the contract for sale and purchase ("contract") between Miami-Dade County, as seller, and Miami-Dade Steel, LLC, a Delaware limited liability company, as buyer, for 123.03 acres of vacant County-owned land identified by Folio No. 30-7901-000-0095 and a portion of Folio No. 30-7901-000-0120 and located directly north of the Homestead Air Reserve Base in unincorporated Miami-Dade County; authorizing County Mayor to execute the third amendment to the contract and to exercise all provisions contained therein

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Kionne L. McGhee.



Geri Bonzon-Keenan
County Attorney

GBK/smm



MEMORANDUM

(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: July 20, 2021

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 14(A)(25)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☒ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 14(A)(25)
7-20-21

RESOLUTION NO. _____

RESOLUTION APPROVING THIRD AMENDMENT TO THE CONTRACT FOR SALE AND PURCHASE ("CONTRACT") BETWEEN MIAMI-DADE COUNTY, AS SELLER, AND MIAMI-DADE STEEL, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS BUYER, FOR 123.03 ACRES OF VACANT COUNTY-OWNED LAND IDENTIFIED BY FOLIO NO. 30-7901-000-0095 AND A PORTION OF FOLIO NO. 30-7901-000-0120 AND LOCATED DIRECTLY NORTH OF THE HOMESTEAD AIR RESERVE BASE IN UNINCORPORATED MIAMI-DADE COUNTY; AUTHORIZING COUNTY MAYOR OR MAYOR'S DESIGNEE TO EXECUTE THE THIRD AMENDMENT TO THE CONTRACT AND TO EXERCISE ALL PROVISIONS CONTAINED THEREIN

WHEREAS, On July 13, 2004, the Board approved Resolution No. R-909-04 which authorized the County to execute an Economic Development Conveyance Agreement ("EDC agreement") with the Secretary of the Air Force on behalf of the United States of America (the "Air Force") to accomplish the transfer of 601 acres of former Homestead Air Reserve Base property ("EDC premises") to Miami-Dade County at no cost, for the purpose of promoting economic development through job creation and new business development in the immediate area of the former Homestead Air Reserve Base; and

WHEREAS, as a result of the EDC agreement, the EDC premises were conveyed to the County by multiple deeds, which included various rights, obligations and restrictions and, since then, the County sought to convey the EDC Premises intended for economic development to industries that will create permanent jobs, attract new businesses, and promote economic development in the Homestead area of Miami-Dade County; and

WHEREAS, on May 22, 2019, pursuant to Resolution No. R-526-19, the Board approved a purchase and sale contract (the “PSA contract”) with Miami Dade Steel, LLC (“ESteel”), a Delaware limited liability company, for the sale of 123.03 acres of vacant, County-owned land identified by Folio. No. 30-7901-000-0095 and a portion of Folio No. 30-7901-000-0120 and located directly north of the Homestead Air Reserve Base in unincorporated Miami-Dade County (the “property”) for \$16,814,100.00 to be used for the development and operation of a micro steel mill; and

WHEREAS, the PSA contract set forth numerous conditions precedent that would need to take place prior to the closing of the sale of the property and set forth an 18-month period during which time the Buyer was to obtain all financing commitments and undertake certain due diligence activities, including but not limited to, testing the land, performing environmental studies, and applying for permits; and

WHEREAS, on May 5, 2020, and following ESteel’s request, this Board approved Resolution No. R-454-20 to grant an extension of six months to the 18-month due diligence period in the contract and to the 12-month period in the contract to satisfy the financing condition due to the interruption of business activities and the current turmoil of financial markets caused by the Covid-19 pandemic; and

WHEREAS, October 22, 2020, pursuant to Resolution No. R-1102-20, the Board approved a second amendment to the PSA contract to grant ESteel an extension of time until May 1, 2021 to satisfy the financing condition in the PSA contract that requires it to secure financial commitment letters, satisfactory to the County, which, when coupled with the firm equity commitments obtained by Buyer, total an amount not less than \$224,000,000.00 to be used to construct the micro steel mill project; and

WHEREAS, on April 5, 2021, ESteel requested extensions of time to various contractual deadlines in order to comply with the terms of the PSA contract; and

WHEREAS, this Board desires to approve a third amendment to the PSA contract to: (1) extend the deadline for ESteel to provide the County with evidence that it has obtained no less than \$224,000,000.00 to develop and build a micro steel mill to May 1, 2022; (2) extend the deadline for ESteel to complete all of its due diligence by an additional 12 months until May 22, 2022; and (3) make the \$840,705.00 deposit provided by ESteel refundable only under certain modified conditions,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. The foregoing recitals to this resolution are incorporated herein and are approved.

Section 2. This Board hereby approves the third amendment to the PSA contract for the property in substantially the form attached hereto and authorizes the County Mayor or Mayor's designee to execute the third amendment to the PSA contract and to exercise all provisions contained in said amendment.

The Prime Sponsor of the foregoing resolution is Commissioner Kionne L. McGhee. It was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Jose “Pepe” Diaz, Chairman

Oliver G. Gilbert, III, Vice-Chairman

Sen. René García

Sally A. Heyman

Eileen Higgins

Kionne L. McGhee

Raquel A. Regalado

Sen. Javier D. Souto

Keon Hardemon

Danielle Cohen Higgins

Joe A. Martinez

Jean Monestime

Rebeca Sosa

The Chairperson thereupon declared this resolution duly passed and adopted this 20th day of July, 2021. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

MRP

Monica Rizo Perez

THIRD AMENDMENT
TO CONTRACT FOR SALE AND PURCHASE

THIS THIRD AMENDMENT TO THE CONTRACT FOR SALE AND PURCHASE ("Third Amendment") is entered into and made effective on this _____ day of _____, 2021 by and between Miami-Dade County, a political subdivision of the State of Florida (hereinafter "Landlord" and/or "County"), and MIAMI-DADE STEEL, LLC, (hereinafter "Buyer" and jointly with the County referred to herein as the "Parties").

WHEREAS, pursuant to Resolution No. R-526-19, on May 22, 2019, the Parties entered into a Contract for Sale and Purchase (the "**Contract**") for the County to sell and the Buyer to purchase the approximately 123.03 acres of real property that is more particularly described in the Survey and legal description attached as **Exhibit "A"** of the Contract (the "**Property**") for the purpose of constructing and operating a steel micro mill; and

WHEREAS, on May 5, 2020 the Board of County Commissioners approved Resolution No. R-454-20 which approved Amendment No. 1 and granted extensions to various contractual deadlines; and

WHEREAS, on October 22, 2020 the Board of County Commissioners approved Resolution No. R-1102-20 which approved Amendment No. 2 and granted an extension to the deadline to submit the Financing Condition by May 1, 2021; and

WHEREAS, the Parties are desirous of amending the Contract in order to extend certain deadlines,

NOW, THEREFORE, in consideration for the mutual promises and covenants contained in this Third Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Buyer agree as follows:

WITNESSETH

1. Recitals. Buyer and the County agree that all of the foregoing recitals are true and correct, and incorporated by this reference in this Third Amendment.
2. Valid Amendment. Buyer and the County agree that this Third Amendment amends the Contract in accordance with Section 17 thereof.

3. Effect of Amendment. Buyer and County agree that all of the terms and conditions in the Contract remain in full force and in effect, except for such terms and conditions that are expressly amended by this Third Amendment.

4. Defined Terms. Buyer and County agree that, unless specifically defined herein, all of the capitalized terms used but not defined in this Third Amendment shall have the respective meanings set forth in the Contract.

5. The Due Diligence Period defined in Section 3 of the Contract is hereby amended to extend the Due Diligence Period by twelve (12) months such that the first sentence in Section 3 of the Contract shall now read as follows:

3. **INSPECTIONS/HAZARDOUS MATERIALS/ACCESS:** The SELLER does hereby grant and provide to BUYER, and its officers, employees, licensees, agents, and vendors non-exclusive permission to enter onto the Property during a thirty-six (36) month due diligence period commencing with the Effective Date (“**Due Diligence Period**”) for the sole and limited purpose of assessing the physical and environmental condition of the Property and of performing its due diligence including, but not limited to, environmental investigation(s), surveying, and geotechnical testing (“**Due Diligence Work**”).

The remainder of Section 3 of the Contract remains unchanged.

6. The following unfulfilled Condition Precedent to Closing in Section 4(a) is hereby amended to extend said unfulfilled Condition Precedent by twelve (12) months such that Section 4(a)(iv) shall now read as follows:

Section 4(a)(iv): On or before May 1, 2022 the BUYER shall secure financial commitment letters, satisfactory to the reasonable approval of the Seller, which, when coupled with the firm equity commitments obtained by BUYER, total an amount not less than Two Hundred and Twenty Four Million Dollars (\$224,000,000.00) (the “Financing Condition”), which funds shall be used to develop and build the Project on the Property in accordance with the Declaration of Restrictions attached hereto as Exhibit “C” (the “Declaration”); and

The remainder of Section 4(a) of the Contract remains unchanged.

7. Section 4(b), Termination and Extension, is hereby amended to read as follows:

Termination and Extension: BUYER and SELLER acknowledge and agree that if one or more of the Conditions Precedent are not satisfied by the applicable deadlines set forth in Section 4(a)(i)-(v) and (vii) above, then either party shall have the right to terminate the Contract by delivering written notice to the other party; provided, however, that with respect to the

failure to deliver the Deposit within thirty (30) days of the Effective Date, any such termination notice associated with such missing Deposit must be delivered prior to the date the Deposit is placed into Escrow in order for the termination to be effective. BUYER and SELLER further acknowledge and agree that, with respect to the Condition Precedent set forth in Section 4(a)(vi) above, if the USAF or the FAA: (x) are unable to complete their mission impact analysis on or before the expiration of the Due Diligence Period; or (y) indicate that, as a result of the mission impact analysis of the Project and Improvements, there will be a negative effect on the operations of USAF at the Homestead Air Reserve Base, then either party shall have the right to terminate the Contract by delivering written notice to the other party.

In the event of any termination under this Section 4(b), the SELLER shall be entitled to retain the entire Deposit amount, equal to Eight Hundred Forty Thousand, Seven Hundred and Five Dollars (\$840,705.00), and neither the BUYER nor the SELLER shall have any obligations or liabilities under this Contract to each other, and each shall bear their own costs, fees, and expenses, if any, with the following exception: if, on or before December 31, 2021, BUYER fully complies with its obligations under Section 4(a)(vi) of this Contract, as determined in the sole discretion of the County following consultation with the USAF, and the USAF or the FAA (i) are unable to complete their mission impact analysis on or before the expiration of the Due Diligence Period, or (ii) indicate that, as a result of the mission impact analysis of the Project and Improvements, there will be a negative effect on the operations of USAF at the Homestead Air Reserve Base, then SELLER shall retain One Hundred Fifty Thousand Dollars (\$150,000.00) of the Deposit and the balance of the Deposit, equal to Six Hundred Ninety Thousand, Seven Hundred and Five Dollars (\$690,705.00), shall be reimbursed to the BUYER.

The Parties acknowledge and agree that the Conditions Precedent set forth in Section 4(a)(i), 4(a)(ii) and 4(a)(iii) of the Contract have been satisfied and fulfilled.

8. The effective date of this Third Amendment shall be the date set forth on the first page hereof.

9. This Third Amendment may be executed in counterparts, each of which shall be deemed an original and all of which together constitute one and the same instrument. Facsimile or electronically transmitted signatures shall be deemed for all purposes to be originals.

This Third Amendment shall constitute a part of the Contract and references to the Contract hereafter shall automatically include a reference to this Third Amendment. In all other respects, the Contract remains in full force and effect in accordance with the terms and

conditions specified therein. In the event of any conflict between this Third Amendment and the Contract, the Third Amendment shall supersede same.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

[ONLY THE SIGNATURE PAGE REMAINS]

IN WITNESS WHEREOF, Buyer and the County have duly executed this Third Amendment, with the intent for it to be legally binding, as of the day and year first above written.

MIAMI-DADE COUNTY

a political subdivision of the State of Florida

By:_____

Name:_____

Title:_____

Date signed: _____

ATTEST:

Harvey Ruvin, Clerk

By:_____

Approved by the County Attorney as to
Form and legal sufficiency

Assistant County Attorney

Witnesses:

Print name:

Maria Diaz

Print name:

Joel Mejia

BUYER:

MIAMI-DADE STEEL LLC, DBA ESteel

A Delaware limited liability company

By:

Name:

GUSTAVO LOPEZ

Title:

CEO

STATE OF FLORIDA

ss:

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before, an officer duly authorized to administer and take acknowledgements, personally appeared Gustavo Lopez, personally known to me, or proven, by producing the follow identification: FL Driver License to be the Buyer, CEO of Miami-Dade Steel, LLC, DBA ESteel, an existing Limited Liability Company under the laws of the State of Delaware, and whose name the foregoing instrument is executed and said officer severally acknowledged before me that he executed said instrument acting under the authority duly vested by said corporation and its Corporate Seal is affixed hereto.

WITNESS my hand and official Seal at Miami, in the County and the State aforesaid, on this, the 25th day of May, 2021.

NOTARY PUBLIC STATE OF FLORIDA

My Commission Expires:

[NOTARIAL SEAL]



Ramon Vargas
Notary Public
State of Florida
Comm# HH103782
Expires 3/11/2025